

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000592

09/02/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED:\_\_\_\_\_

STATE OF ARIZONA

LISA MARIE MARTIN

v.

AMY BROWN

SIMONE ANNE ATKINSON

BUCKEYE JUSTICE COURT  
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

BUCKEYE JUSTICE COURT

Cit. No. #2604200 C

Charge: EXTREME DUI

DOB: 07/22/70

DOC: 02/22/02

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since July 6, 2004, the date when all parties' supplemental memoranda were due. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings before the Buckeye Justice Court, the memoranda and oral arguments submitted by counsel, and the supplemental memoranda submitted.

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Appellant, Amy Brown, was arrested and charged with two counts of Driving While Under the Influence of Intoxicating Liquor, one count of Unsafe Lane Change, and one count of Extreme DUI, all class 1 misdemeanors except the civil traffic offense. Prior to trial, Appellant's counsel filed a Motion to Suppress the results of her blood draw, which was denied by the trial court on August 15, 2002. Following the trial court's ruling, the parties submitted the case to the court on stipulated evidence. Appellant was found guilty of Extreme DUI, and has filed a timely Notice of Appeal in this case.

The only issue presented for review to this court is whether the trial court erred in denying Appellant's Motion to Suppress.

An appellate court must give deference to trial judge's factual findings when ruling on motions to suppress. Trial judges are in the best position to evaluate witnesses' credibility and the reasonableness of actions of the witnesses.<sup>1</sup> This Court must review a trial judge's ruling on a motion to suppress using an abuse of discretion standard.<sup>2</sup> Only when a trial judge's factual findings are not justified, or are clearly against reason and the evidence, will an abuse of discretion be established.<sup>3</sup> This Court reviews *de novo* those legal issues addressed by the trial judge.<sup>4</sup>

Appellant objects to the blood draw performed in this case because the blood draw was performed by a DPS police officer who had received training as a phlebotomist. Contrary to Appellant's assertions, police officers are not disqualified from performing blood draws. There is no inherent legal conflict. Rather, the question is whether the person who performed the blood draw (police officer or not) was trained and qualified to perform that blood draw.<sup>5</sup>

In this case, the record supports the trial judge's ruling that the phlebotomist/police officer was trained and qualified to perform the blood draw. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Buckeye Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Buckeye Justice Court for all further and future proceedings in this case.

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<sup>1</sup> *State ex rel. Collins v. Seidel* (Deason, Real Party in Interest), 142 Ariz. 587, 691 P.2d 678 (1984).

<sup>2</sup> *State v. Rogers*, 186 Ariz. 508, 924 P.2d 1027 (1996).

<sup>3</sup> *State v. Chapple*, 135 Ariz. 281, 660 P.2d 1208 (1983).

<sup>4</sup> *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 927 P.2d 776 (App. 1996).

<sup>5</sup> See, *State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 30 P.3d 649 (App. 2001); *State v. Carrasco*, 203 Ariz. 44, 49 P.3d 1140 (App. 2002).

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/ s / HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT